

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

IN THE MATTER OF LONDON BLOCK EXCHANGE LIMITED ('the Company')
AND IN THE MATTER OF A WINDING UP PETITION
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

SQUIRE PATTON BOGGS (UK) LLP

Petitioner

-and-

LONDON BLOCK EXCHANGE LIMITED

Respondent

PETITIONER'S SKELETON ARGUMENT
HEARING: 31ST JANUARY 2020 AT 14:00

A. INTRODUCTION

1. This is the hearing of the Petition to wind up the Respondent Company, London Block Exchange Limited ("**LBEL**").
2. The Applicant presented a petition to wind up LBEL to this court on 25 February 2019 ("**the Petition**").
3. LBEL issued an application on 23 January 2020 which it is understood will also be before the court ("**the Application**").
4. The following witness statements have been filed in the Petition:

- a. Second witness statement of Russell Hill dated 1 May 2019 on behalf of the Petitioner;
- b. First witness statement of Benjamin Dives dated 9 April 2019 on behalf of LBEL;
- c. Second witness statement of Benjamin Dives dated 15 May 2019 on behalf of LBEL;
- d. Witness statement of Jonathan Sandelson dated 15 May 2019 on behalf of LBEL;
- e. Third witness statement of Russell Hill dated 1 August 2019 on behalf of the Petitioner;
- f. Fourth witness statement of Russell Hill dated 27 January 2020 on behalf of the Petitioner.

B. FACTUAL BACKGROUND

5. The background to this dispute is contained within the above witness statements. In short, the Petitioner provided legal services to LBEL, for which the Petitioner produced interim statutory bills dated 29 March 2018 and 25 April 2018 that remain unpaid (“**the Invoices**”).
6. By way of emails LBEL acknowledged the work carried out, thanked the Petitioner for the ‘excellent’ work, and made written promises to pay the interim statutory bills¹ (both before and after the Petition was presented).
7. Following presentation of the Petition (and more than 12 months after the first invoice), LBEL claimed that there was no retainer between the Petitioner and LBEL and that the Invoices “*did not comply with Section 69 of the 1974 Solicitors Act and do not constitute a Final Solicitors Bill under the 1974 Solicitors Act*”. LBEL issued a claim in the Senior Court Costs Office in support of that assertion (“**the SCCO Proceedings**”).
8. At the first hearing of the Petition on 10 April 2019 the Petition was adjourned.

¹ See Second witness statement of Russell Hill

9. The Petition came before this court on 2 August 2019 for directions. At that hearing LBEL made an application (issued shortly beforehand) to delay hearing of the Petition until after 6 September 2019 when the SCCO Proceedings had been heard (**“the June 2019 Application”**). There was no hearing date available before 6 September 2019 in any event therefore the June 2019 Application was otiose. The matter was listed for the first available date after 1 December 2020 in order to accommodate the court listing.
10. At a hearing on 6 September 2019 in the SCCO Proceedings, listed to determine the preliminary issue of whether any valid/enforceable retainer existed, Master Rowley found that a valid and enforceable retainer did exist² and that the bills served by the Petitioner were interim statute bills such that they were due and payable. Master Rowley gave directions for the assessment of costs and provided for either party to request a hearing after 25 October 2019.
11. On 16th October 2019 the Petitioner served its points of dispute and invited LBEL to request a hearing in accordance with paragraph 6 of the Order.
12. On 29th October 2019 the Petitioner sought confirmation that LBEL had requested a hearing in their SCCO proceedings. LBEL failed to request a hearing.
13. On 7th November 2019 the Petitioner wrote again, by way of email to LBEL’s costs lawyer, Paul White, seeking confirmation that LBEL was intending to make an application for a hearing and warning specifically that, due to the existence of the Petition, the Petitioner was not prepared to let the matter be delayed further.
14. As LBEL failed to make an application for assessment of the Petitioner’s costs, the Petitioner made an application for a hearing and paid the court fee, in order to progress LBEL’s SCCO proceedings.

² In fact, the author understands that the Master did not even countenance hearing argument on this point and declared that the evidence overwhelmingly confirmed a retainer at the outset of the hearing.

C. THE LEGAL TEST ON AN APPLICATION TO WIND UP A COMPANY

15. A company may be wound up if it is unable to pay its debts as they fall due; **s.122(1)(f) IA 1986**.
16. A company is unable to pay its debts as they fall due if a creditor makes demand for a debt in the prescribed form and the company fails to make payment and/or it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due; **s.123 IA 1986**.
15. It is well-established that where the court is faced with a debt that is disputed in the insolvency courts, the approach is similar to that taken on a summary judgment application under **CPR 24**, the question being whether there is a genuine issue raised which needs to be decided at a trial rather than being capable of being dismissed at the hearing as having no real substance to it: per Nugee J in **Hayes v Hayes** [2014] EWHC 2694³.
17. A winding up order will not be made if the company has a genuine and serious cross claim in an amount which would reduce the petition debt below £750; **Re Bayoil SA** [1998] BCC 988.

³ Although Nugee J was in that case dealing with a cross-claim rather than a dispute as to the petition debt, the principles as summarised by Nugee J apply equally where the petition debt is disputed: see **Baker v LSREF III Wight Ltd** [2016] BPIR 509.

D. SUBMISSIONS

Inability to pay debts as they fall due

18. The Petitioner has a liquidated debt that is due and payable. The detail of the debt is important: there was a prospective agreement as to the amounts payable by LBEL in respect of the works undertaken by the Petitioner. Those works now form the subject of the Invoices⁴. Therefore, the Petition can be presented in respect of this debt and there is no need to await the outcome of the assessment; *Truex v Toll* [2009] EWHC 396 (Ch) at [32]. That disposes of the Application.
19. The Invoices have been outstanding since April/May 2018 and LBEL has failed to make payment. Accordingly, the court can conclude that LBEL is unable to make payment of its debts as they fall due.
20. Although the Petitioner did not serve a statutory demand⁵, some of the supporting creditors have, examples can be produced at the hearing if necessary. The supporting creditors' debts remain outstanding further demonstrating an inability to pay debts as they fall due, on a cash flow basis.
21. LBEL is also balance sheet insolvent.

No dispute as to the debt

22. The only challenges to the Petitioner's debt raised by LBEL were the allegations that there was no retainer between the Petitioner and LBEL and that the Invoices "*did not comply with Section 69 of the 1974 Solicitors Act and do not constitute a Final Solicitors Bill under the 1974 Solicitors Act*"⁶. Those challenges have been dispelled by Master Rowley.

⁴ See paragraphs 6 – 24 of the Second Witness Statement of Russell Hill and the exhibits thereto.

⁵ There is of course no requirement to serve a statutory demand, a court can conclude that a company is unable to pay its debts as they fall due without the need for a statutory demand, simply on the basis that the company has failed to make payments of invoices due.

⁶ As per the June 2019 Application

23. In the circumstances it is submitted that there is no dispute as to the debt.
24. LBEL only sought an adjournment until after 6 September 2019 and until the outcome of the hearing before Master Rowley was known. That of course makes sense, because LBEL's only challenge was as set out at paragraph 20 above, which was all to be resolved by the hearing on 6 September 2019.
25. There is no further reason to delay the hearing of the Petition. There is no genuine dispute as to the debt and the Application is merely a last-ditch attempt to delay the inevitable.

E. SUPPORTING CREDITORS

26. The Petition is of course a class action.
27. There are now 13 other creditors supporting the Petition (some of which are employees or former directors), with debts totalling over £1m.
28. Any further delay to the hearing of the Petition prejudices the creditors as a whole. The creditors have already been subject to significant delay as a result of the SCCO Proceedings, which turned out to be a fruitless exercise for LBEL. It is submitted that this was merely a delaying tactic in any event.
29. The following matters are a cause for concern to creditors:
- a. On 26 July 2019, only one week before the last hearing, LBEL changed its name to Dragon Payments Limited.
 - b. On 21 February 2019, LBEL filed notice at Companies House of a change in control of LBEL and of share transfers, backdated to 1 June 2018, prior to the Petition being presented.
 - c. In 2019 Benjamin Dives set up two new companies, namely LBX Securities Limited (company number: 11930187) and LBX PEG Ltd (company number: 11784655).

F. CONCLUSION

30. For the reasons set out above, the Court is invited to dismiss the Application and proceed to hear the Petition and wind up LBEL.

31. It is submitted that there is no need to await the outcome of the assessment in the SCCO Proceedings because the Petitioner has a liquidated debt to the extent of the sums agreed on the basis on *Truex*.

32. In any event, LBEL should not be able to benefit from a failure to prosecute its own application. LBEL applied for the SCCO Proceedings but then failed to seek an assessment following the hearing on 6 September 2019. It is submitted that this was merely a delaying tactic in an attempt to prevent a hearing of the Petition.

29 JANUARY 2019

**KATE ROGERS
RADCLIFFE CHAMBERS**